IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 774 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUNNA @ RAGHURAM JAGDISHBHAI
Versus
STATE OF GUJARAT

Appearance:
MR JV DESAI for appellant
Mr. K.G. Sheth, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE R.R.TRIPATHI
Date of decision: 02/12/1999

ORAL JUDGEMENT (Per: Kadri, J.)

1. Appellant-original accused has filed this appeal under Section 374(2) of the Code of Criminal Procedure challenging judgment and order dated May 28, 1993, passed by the learned Additional Sessions Judge, Rajkot, in Sessions Case No.68 of 1992, by which, the appellant was convicted for offence under Section 302 Indian Penal

Code, and sentenced to undergo imprisonment for life and fine of Rs.1000 in default R.I. for two months.

2. The case of the prosecution, as unfolded at the trial, is as under: Vallabhbhai Ravjibhai (hereinafter referred to as 'deceased') was residing with his family at Kuvadava road., Vallabhnagar, Rajkot. Adjoining to the house of the deceased, one Jagdishbhai Bawaji, who is the father of the appellant, was residing with his family members. The eldest son of the said Jagdishbhai Bawaji is the appellant who was doing cycle repairing work.

3. In the night of June 3, 1992, the appellant had climbed to the terrace of his house and peeped into the house of the deceased at 1.30 a.m. The wife of the deceased, Jamnaben, raised shouts as the appellant had tried to peep into the house. There were some exchange of words between the family members of both neighbourers. On June 4, 1992, at about 5.30 p.m. the deceased, along with his minor son, Sandeep, aged about 9 years, had gone to purchase 'Ganthiya' (snacks) from the lorry just near the octroi-naka. When the deceased and his son, Sandeep, were standing near the said lorry, appellant came there. There were some heated exchange of words between the appellant and the deceased. The appellant got enraged and took out a knife and gave six blows on the chest and stomach parts of the body of the deceased with the result the deceased fell down in a bleeding condition. Due to profuse bleeding, the deceased had succumbed to injuries. Inquest was held of the dead body of the deceased and after drawing inquest panchanama, the dead body of the deceased was sent to the Rajkot Civil Hospital where autopsy was performed by Dr. Rajendra Shantilal Pandya, on June 5, 1992 at 7.a.m. After inflicting injuries on the deceased, the appellant, along with knife, had run away from the scene of offence. P.W. 14, Dhanjibhai, had witnessed the incident and had seen the appellant giving blows with knife. P.W.14, Dhanjibhai, chased the appellant, but he could not catch hold of him. The appellant was apprehended by two policemen when he was running away with the knife.

4. PSI, Mr.K.J. Gohil, who was at the relevant time performing his duty at "B" Division Police Station, Rajkot, received information that one person was killed near old octroi naka. After receiving the information, PSI Jadeja went to the place of incident and recorded complaint of the wife of the deceased, Jamnaben, The said complaint was forwarded by PSI, Gohil, to "B" Division Police Station, where the offence was registered at C.R. No.I-196/92 against the appellant, for the offence under

Section 302 Indian Penal Code. Investigation of the said offence was entrusted to PSI, Gohil. In the meantime, two police constables who had arrested the appellant when he was trying to run away with knife produced the appellant before the PSI and the appellant was arrested by 'arrest panchanama' drawn at the police station. The appellant had also sustained injuries and, therefore, he was referred to the Civil Hospital where he was examined by Dr. Dharmesh Shah. PSI, Gohil, recorded statements of witnesses. The appellant had lodged a complaint on June 5, 1995 against the deceased. PSI, Gohil, had recorded statements of police officers who had apprehended the appellant while he was running away with the knife. Clothes of the deceased as well as the appellant were seized under panchanamas and were sent to the Forensic Science Laboratory for analysis. Panchanama of scene of offence was drawn by the Investigating Officer and statements of other witnesses were also recorded on June 11, 1992. On completion of investigation, chargesheet came to be filed against the appellant on June 21, 1992 in the Court of Chief Judicial Magistrate, Rajkot, which was registered as Criminal Case No.2335 of 1992. As offence punishable under Section 302 Indian Penal Code is exclusively triable by Court of Sessions, the learned Judicial Magistrate, First Class, Rajkot, by order dated July 10, 1992, committed case to the Court of Sessions, at Rajkot, which came to be numbered as Sessions Case No. 68 of 1992.

5. Charge Exh.1 was framed against the appellant for offence punishable under Section 302 Indian Penal code. The charge was read over and explained to the appellant. He pleaded not guilty to the charge and claimed to be tried. To prove the guilt of the appellant, the prosecution examined the following witnesses: (1) PW 1, Dr. Rajendra S. Trivedi, Exh.6; (2) PW 2, Dr. Darmesh H. Shah, Exh.14, (3) PW 3, Suryakant N. Suchak, Exh.20; (4) PW 4, complainant, Jamnaben Vallabhbhai, Exh.23, (5) PW 5, Gordhanbhai Ramjibhai, Exh.24, (6) PW 6, Manan Brij Narayan Pandit, Exh.25, (7) PW 7, Jilu Vinubhai, Exh.26, (8) PW 8, Sangabhai Makabhai, Exh.27, (9) PW 9, Bharat Mombhai, Exh.28, (10) PW 10, child witness, Sandeep Vallabhai Patel, Exh.30, (11) PW 11, Dhaniben Bhagwanji, Exh.31, (12) PW 12, Ramesh Mangabhai, Exh.32, (13) PW 13, Ramesh Narsibhai Exh.33, (14) PW 14, Eye-witness Dhanjibhai Vastabhai, Exh.34, (15) PW 15, Ramesh Memjibhai, Exh.44, (16) PW 16, Vallabh Polabhai, Exh.56; (17) PW 17 Feroz Nathubhai, Exh.47; (18) PW 18, Bhikhubhai Gambhir Singh, Exh.49; (19) PW 19, Lakabhai Karsanbhai, Exh.51; (20) PW 20, Abidali Siddik Miya,

Exh.53, (21) PW 21 Bhikhalal Mangabhai, Exh.55, (22) PW 22, Talshibhai Manjibhai, Exh.57, (23) PW 23, Hansrajbhai Laxmanbhai, Exh.61, (24) PW 24, Bharat Dhirajlal, Exh.62, and (25) PW 25, PSI, Kishoresinh Jerubha Gohil, Exh.63. The prosecution produced documentary evidence consisting of inquest panchanama, post-mortem notes, blood-group report of the deceased, case papers of the Civil Hospital with regard to injuries found on the body of the appellant, map of scene of offence, panchanama of scene of offence, report of FSL, complaint lodged by Jamnaben, complaint lodged by the appellant against the deceased, notification issued by the Police Commissioner, Rajkot, under Section 37 of the Bombay Police Act, extracts of station diary of Rajkot City 'B' Division Police Station, etc. to prove the case against the appellant.

6. After the recording of evidence of prosecution witnesses was over, the appellant was generally questioned by the learned Additional Sessions Judge and his statement under Section 313 of the Code of Criminal Procedure, 1973, was recorded. In his statement, the appellant denied to have committed any offence with which he was charged. Even the appellant denied that he had sustained injuries as mentioned in the injury certificate and as deposed by PW 2 Dr. Darmesh Shah. In short, the appellant stated in his further statement that he had not committed any offence and he is an innocent person and he is falsely involved in this case. However, the appellant did not lead any evidence in defence.

7. On appreciation of evidence, the learned Additional Sessions Judge held that (1) the deceased died homicidal death on June 4, 1992 at about 17.30 hrs near old octroi naka, Rajkot; (2) evidence of child witness, Sandeep, and P.W.14, Danjibhai Dodiya, proved that the appellant had given knife blows on the chest and stomach parts of the body of the deceased; (3) evidence of child witness, Sandeep, and P.W.14, Danjibhai, was reliable and trustworthy; (4) the appellant was found with blood-stained knife in his hand when he was caught by the police while he was running away; (5) blood group which was found on the clothes of the deceased and clothes and chappals of the appellant was the same blood group of the deceased; (6) the appellant had selected vital parts of the body of the deceased for giving severe knife blows; (7) the appellant was not entitled to plea of right of self defence of his body; (8) the appellant had predetermined mind to kill the deceased as he was armed with knife and with knowledge that the blows inflicted on the body of the deceased were likely to cause death of the deceased; and (9) the complaint lodged by the

appellant proved that he was present at the place of the incident. In the ultimate decision, the learned Additional Sessions Judge convicted and sentenced the appellant as mentioned earlier, giving rise to filing of the present appeal by the appellant.

8. Mr. J.V. Desai, learned counsel for the appellant, contended that the learned Additional Sessions Judge erred in relying upon evidence of child witness and evidence of P.W. 14, Dhanjibhai Dodiya, for holding that the said witnesses had seen the actual occurrence of the incident wherein the appellant had given fatal knife blows to the deceased. It is stressed by the learned counsel for the appellant that, as per the complaint lodged by the appellant, the deceased assaulted the appellant and, in his self defence, the appellant inflicted knife blows on the deceased. It is contended by learned counsel for the appellant that, at the most, the appellant had right of self-defence and if he had exceeded his right of self-defence, he can be convicted under Section 304 Part I Indian Penal Code. It is further contended by the learned counsel for the appellant that the prosecution had not explained the injuries found on the appellant and, therefore, the prosecution had tried to suppress the genesis of occurrence of the incident. It is further contended by learned counsel for the appellant that as the prosecution has suppressed the genesis of occurrence of the incident, benefit of doubt should be extended to the appellant and the appeal be allowed and the conviction be set aside.

9. Mr. K.G. Sheth, learned Additional Public Prosecutor, on the other hand, submitted that the appellant had selected vital parts of the body of the deceased for inflicting severe six knife blows. It is contended by the learned counsel for the respondent that the deceased was unarmed and, therefore, the appellant who was armed with knife was not entitled to inflict knife blows on the deceased in his self-defence. It is further submitted by the learned counsel for the respondent that, no plea of self defence was raised by the appellant during the recording of his further statement and not even suggestion was made to the witnesses of the prosecution that the deceased had first assaulted the appellant and in his right of self-defence he had inflicted injuries on the body of the deceased. It is further contended by the learned counsel for the respondent that in the further statement the appellant had never claimed that as he was injured due to assault by the deceased, he had lodged complaint. Learned counsel for the respondent pointed out that even the

appelant in his further statement had denied to have received any injuries on his body. At the end, it is contended by the learned counsel for the respondent that the prosecution had proved beyond reasonable doubt that the appellant had predetermined mind and with knowledge and intention had inflicted severe knife blows on the vital parts of the body of the deceased which resulted in his death. It is submitted by learned APP that the prosecution had proved its case beyond doubt that the appellant had committed offence under Section 302 Indian Penal Code and the appeal be dismissed and the conviction of the appellant recorded by the learned Additional Sessions Judge should be confirmed by this Court.

10. We have been taken through the entire evidence on the record by the learned counsel for the parties.

11. The submission of the learned counsel for the appellant that the learned Additional Sessions Judge erred in relying upon the evidence of child witness, Sandeep, who is son of the deceased, does not deserve any merit and requires to be rejected. Before giving oath to the child witness, Sandeep, who was aged 9 years, the learned Additional Sessions Judge had questioned the child witness and asserted from him whether he knew sanctity of oath and whether he understood all the questions which were put before him. After the learned Additional Sessions Judge was satisfied with the answers given by the child witness, Sandeep, he was administered oath and his evidence was recorded. The child witness, Sandeep, P.W. 10, had given a vivid description as to how the incident had taken place. He had deposed that he along with the deceased had gone to the lorry to buy 'Ganthiyas' (snacks). He even mentioned the time as it was 5.30 p.m. He stated that the appellant was standing near the lorry of snacks and he had inflicted knife blows on the stomach of his father. He had stated that about 5-6 blows were given by the appellant as a result of which his father had fell down and he was profusely bleeding. The child witness even identified the clothes put on by the deceased at the time of incident and knife with which the appellant had given blows on the body of the deceased. The child witness was cross examined by learned counsel for the appellant and he denied that some unknown person had inflicted knife blows on the body of the deceased. He maintained during the cross examination that the appellant was the person who had given fatal blows to the deceased. We have scanned through minutely the evidence of the child witness and we are satisfied that he was truthful and reliable witness. The child witness had given proper account of the incident

witnessed by him. His testimony cannot be discarded on account of likelihood of being tutored. It should not be forgotten that the child witness was aged 9 years and he had seen the appellant inflicting fatal blows with knife on the vital parts of the body of the deceased. The child witness, a close relative of the deceased, would not spare the real culprit by falsely involving the appellant. Even the child witness, during his oral evidence in the Sessions Court, had identified the appellant as assailant who had inflicted knife blows on the deceased. Section 118 of the Evidence act, 1872 reads as under:

"118. Who may testify.- All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."

As mentioned earlier, the learned Additional Sessions Judge was satisfied himself by putting questions to the child witness and, being satisfied with the answers given by the child witness that he understood the questions and given rational answers, oath was administered on the child witness. The vivid and accurate description of the incident narrated by the trial witness, in our opinion, is reliable and we do not find that reliance placed on the testimony of the child witness by the learned Additional Sessions Judge is unwarranted.

12. The submission of the learned counsel for the appellant that the learned Additional Sessions Judge erred in relying upon the evidence of PW 14, Dhanjibhai Vastabhai Dodiya, for holding that the witness had actually witnessed occurrence of the incident, also does not deserve any merit and requires to be rejected. P.W. 14, Dhanjibhai, was residing near old Octroi Naka. He along with other friends was sitting near the place of the incident. He deposed that at about 5.30 hours the appellant had some exchange of words with the deceased and when he had reached at the place of the incident, he saw appellant giving knife blows on the deceased. When the appellant after inflicting knife blows was running away, the witness had chased him but he could not catch hold of him. He specifically deposed that the appellant had given 5-6 knife blows on the stomach and chest of the deceased. The witness claimed that he knew that the deceased and the appellant were residing behind Shivpara area in Rajkot city. He also claimed that the appellant and the deceased were used to come and sit near old Octroi Naka. During his oral evidence, P.W.14, Dhanjibhai, identified muddamal knife as well as clothes

put on by the deceased at the time of the incident. During cross examination, he denied the suggestion that the deceased had a quarrel with some unknown person and at the time of the incident he was not present at all. We do not find any infirmity in the evidence of P.W.14, Dhanjibhai, who is eye-witness of the incident. He had deposed before the Court in most natural way and his evidence is not shaken during searching cross examination by the learned counsel for the appellant. In our opinion, P.W.14, Dhanjibhai, is also reliable witness. Evidence of P.W. 14 also stands amply corroborated by the evidence of child witness, Sandeep. We, therefore, hold that the learned Additional Sessions Judge has not committed any error in relying upon the evidence of this eye witness.

13. The submission of the learned counsel for the appellant that the appellant had inflicted knife blows in his right to defend his body, also deserves to be rejected. It may be noted that 'plea of self defence' has to be established by an assailant at the time of the trial. The appellant had not put forward a case for right of private defence during examination of prosecution witnesses. As per the complaint Exh.67 lodged by the appellant, he was first assaulted by the deceased who had scratched his neck with finger nails and was given fist and kick blows and, in right of self defence, he had inflicted knife injuries on the deceased. If this was the defence of the appellant, then, the same should have been put to the witnesses during their cross examination. Even during recording of further statement under Section 313 of the Code, the appellant had not put forward his plea of right of private defence. It would not be out of place to mention that even during his further statement he denied to have received any injuries on his body during occurrence of the incident. This clearly negates the argument put forward by the learned counsel for the appellant that the appellant in exercise of his right to self defence had inflicted knife blows on the deceased. In absence of any evidence or suggestion put forward by the appellant, we are unable to accept submission of the learned counsel for the appellant that the appellant in his right of self defence had inflicted knife blows on the deceased and, therefore, he should be held guilty under Section 304, Part I, Indian Penal Code, and not under Section 302 Indian Penal Code. It would not be out of place to mention here that the deceased at the time of the incident was unarmed. The appellant had selected vital parts of the body of the deceased for inflicting knife blows and that too six knife blows with full force. Nature of the injury caused by the weapon

used on the vital parts of the body, which are inflicted against the unarmed person, negates any just plea of self-defence. (See: Baitullah and another vs. State of U.P, AIR 1997 Supreme Court 3946). The appellant had not raised any plea before the Sessions Court that he apprehended death or grievous hurt due to assault on him by the deceased. As per the complaint lodged by the appellant, the deceased had given kick and fist blows and had scratched his skin by finger nails. Even this case was not put forth to the witnesses during their cross examination. Therefore, in absence of even suggestion to the witnesses, it is not open to the appellant to claim right to self-defence.

14. As per the evidence of Dr. Rajendra Shantilal Pandya, PW 1, Exh.6, the deceased had sustained six internal injuries. In his deposition, the witness, who performed post-mortem on the body of the deceased, deposed that all the external injuries were corresponding to the internal injuries as mentioned in the post-mortem report Exh.13. He deposed that the injuries caused on the body of the deceased with the help of knife were sufficient in the ordinary course of nature to cause death. The weapon used and the injuries found on the body of the deceased clearly indicate that the appellant with predetermined mind had inflicted fatal knife blows on the body of the deceased. The appellant had acted in a most cruel and unusual manner in inflicting knife blows on the body of the deceased and had taken advantage of the situation wherein the deceased was unarmed. The appellant had selected vital parts of the body of the appellant for inflicting serious knife blows. Clothes put on by the deceased were sent to the FSL, which also tallied with the injuries caused by the knife on stomach and chest of the body of the deceased. The size of the injuries as mentioned in the post-mortem report also tallied with the cut-marks found on the clothes of the deceased. The blood group 'B' of the deceased was found on the clothes of the appellant as well as on the chappals put on by the appellant. This also indicates that the appellant was in the near proximity of the deceased while he was inflicting knife blows on the deceased. There would be no other conclusion except that the appellant and the appellant alone was the assailant who had caused injuries on the deceased. The appellant had intention and knowledge to kill the deceased and he knew very well that the injuries which were caused were in the ordinary course of nature would be sufficient to cause death of the deceased. We do not have any hesitation in holding that offence under Section 302 Indian Penal Code is proved to have been committed by the

appellant by the prosecution. In no case the appellant was entitled to right to self defence. The submission of the learned counsel for the appellant that the case would fall under Section 304, Part I, Indian Penal Code, also deserves to be rejected. There is no substance in any of the submissions made by the learned counsel for the appellant and the appellant has not made out any ground to interfere with the order of conviction recorded by the learned Additional Sessions Judge and, therefore, the appeal is liable to be dismissed.

15. For the foregoing reasons, the appeal fails and is dismissed. Muddamal is ordered to be disposed of in terms of the impugned judgment.

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(swamy)